(2)

09-112

IN THE SUPREME COURT OF THE UNITED STATES

ANGEL RUIZ RIVERA AND
INSTITUTO DE EDUCACION UNIVERSAL

PETITIONERS

V.

UNITED STATES DEPARTMENT OF EDUCATION

RESPONDENT

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ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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PETITION FOR REHEARING

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# APPELLANTS BRIEF

JULIO MORILLO LIMARDO, ESQ.
AVENIDA BETANCES I-17
HERMANAS DAVILA
BAYAMON, P R. 00959.
787-485-5437

## QUESTIONS PRESENTED

Whether this Court should condone or acquiesce to the fact that the Federal Rule of Civil Procedure 60 B Motion was never evaluated on its merits by neither the district nor the circuit courts and that ergo, the new evidence produced which totally exonerated the Petitioners was never taken into consideration?

Whether this Court should condone or acquiesce to the forfeiture of Co-Petitioner's Angel Ruiz Rivera's standing to continue appearing in his appeal of the FRCP 60 (b) Motion denied especially when he suffered personally the quintessential injury-in-fact by the Internal Revenue Service (IRS) by imputing Trust Fund Liabilities over him personally as the person responsible for IEU's tax debt?

Whether this Court should condone or acquiesce to the fact that the courts below erred by allowing CoPetitioner to represent the corporation for many years, against the stare decisis of this Court which forbids same?

## LIST OF ALL THE PARTIES

The Petitioners are: Angel Ruiz Rivera and Instituto de Educacion Universal (IEU).

The Respondent is the U.S. Department of Education (USDE).

## CORPORATE DISCLOSURE STATEMENT

I Julio Morillo Limardo, Esq., appearing here for IEU, hereby certify that there is no parent corporation, or publicly held company owning 10% or more of the corporation's stock.

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## CITATIONS AND THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY THE COURTS

U.S. Supreme Court Order of April 13, 2009 granting application fro extension of time to file Petition.

First Circuit's Order of December 2, 2008 denying and striking motion for court to rule on rehearing filed by Co-Plaintiff and signatory of Notice of Appeal Angel Ruiz Rivera.

First Circuit's Order of August 5, 2008 denying and striking "Motion For Conversion of the Motion Requesting Court To Clarify Its Order Into A Motion For Panel Rehearing and/or Rehearing En Banc".

First Circuit's Order of April 30, 2008 denying and striking Co-Plaintiff and signatory of the Notice of Appeal, Ruiz Rivera's "Motion For Reconsideration" of Order dismissing him as a party.

First Circuits Order of October 10, 2007 denying and striking petition of Co-Plaintiff, and signatory of the Notice of Appeal, Ruiz Rivera, for rehearing and rehearing en banc and for disqualification

First Circuit's Judgment of May 11, 2007 Summarily affirming the district court's denial of its motion for relief of judgment, filed under Fed. R. Civ. P 60(b).

Order of the District Court of January 18, 2006, ruling that □ This case is under appeal.□

Judgment of the District Court, of October 26, 2004.

## ADMINISTRATIVE DECISIONS PETITIONED TO BE REVIEWED

Order of the Secretary of January 9, 1998 of the USDE Secretary affirming his final agency decision

Decision of the Secretary of October 28, 1997.

Decision of the USDE Administrative Law Judge (ALJ) of January 24, 1997

## STATEMENT OF THE BASIS FOR JURISDICTION

Jurisdiction of this Court is authorized by 28 U.S.C. 1254.

Jurisdiction in the court of first instance was authorized by 28 U.S.C. 1331.

## THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE.

First Amendment.

Fourth Amendment.

Fifth Amendment.

Sixth Amendment.

Higher Education Act (HEA) of 1965 as amended, 28 U.S.C. 1070 et seq.

## CONSICE STATEMENT OF THE CASE

Petitioners Angel Ruiz Rivera and Instituto de Educacion Universal (IEU) are appearing here through the undersigning counsel after having struggled for more than fourteen (14) years for a day in court in this federal judicial system, heretofore to no avail. As a result, we are hereby imploring the members of this U.S. Supreme Court (Court), to provide for Justice in this controversy where 5,000 students and 500 employees were negatively affected plus Ruiz Rivera and his family. There are various reasons why the Honorable Justices of this Court should be persuaded that it is in the best interests of Justice to grant this petition for rehearing and consider the petition for certiorari on its merits.

The first reason is that Co-Petitioner Ruiz Rivera was forfeited of his Fifth Amendment due process rights to continue to appear as a party in the appeal below before the U.S. Court of Appeals for the First Circuit (USCA1C), after having litigated before it for more than eleven (11) years.

The mere fact that this Co-Petitioner, who was not only a named party, but the main plaintiff, plus the filer and signatory of the Notice of Appeal upon which the USCA1C took the appeal, was left out of same, is in direct conflict with the decisions of at least eight (8) Circuit Courts [1], including most notably the own USCA1C.

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[1] See cases in the Petition for Certiorari at pp. 23-24.

The mere fact that the USAC1C in the appeal below decided in a manner contrary to its own precedent, denote an untenable disparate treatment and incongruence, tantamount to a bias and prejudice that this Court should not condone or acquiesce to.

Nevertheless, what is still more significant is that the USCA1C decision to forfeit the standing of this Co-Petitioner is contrary to the ruling of this own Court in Devlin v. Scardelleti, 536 U.S. 1, (2002,) where you went as far as to allow non-parties to a controversy to appear on the appeal of same, simply because they were negatively affected by it, as mere reason and logic dictate, besides elementary principles of Equity and Justice. With regards to this strictly legal issue, on that cited opinion, you admonished that:

**We have never, however, restricted the right to appeal to named parties to the litigation.** (Emphasis supplied). (Citations omitted).

For the above stated reasons, without more, the members of this Court have here a formidable and unique opportunity to establish policy and make a ruling regarding this strictly legal issue as to what should be the limits to the extension of the standing to appear in the appeal of a controversy by a litigant negatively affected by its decision especially in cases such as in the one in this controversy where the litigant proactively prosecuted his action before the district and circuit courts for over eleven years and was the filer of the Notice of Appeal upon which the Circuit Court acted.

The second reason why the members of this Court should be persuaded that this petition for rehearing should issue just as the certiorari is that Ruiz Rivera's standing should not had been forfeited also because as a direct result of the Respondents' unconstitutional, illegal, wrong and/or negligent actions, the Internal Revenue Service (IRS), determined that Ruiz Rivera is the person responsible for the unpaid taxes of Co-Petitioner Instituto de Educacion Universal (IEU). This determination resulted in the imputation of Trust Fund Liabilities (TFL's) against Ruiz Rivera personally for over $336,000, back in 1997, that to this date, amount to over $1 million dollars, with the interests accrued.

As the Honorable Justices of this Court must at least concur with, the imputation of TFL's constitute the quintessential injury -in-fact that a citizen of this otherwise Great Republic can suffer from the Government, since it negatively affects the person responsible for the taxes until they are paid and they are not dischargeable even through a personal bankruptcy.

For the above stated reasons only, without more, this Court has more than enough reasons to be persuaded to grant this petition for rehearing in consideration of the fact that the USCA1C's forfeiture of this Co-Petitioner's standing to continue to appear in his own appeal, after he was found to be the person responsible of the IRS imputed TFL's, is an anathema to this Constitutional system of law.

With all due respect, if this Court were to uphold the decisions in this controversy as they remain so far, it would be not only validating a grave injustice against the Petitioners, but it would be condoning or acquiescing to grave injustices like the ones here where citizens negatively affected by overzealous and/or incompetent Government officers, acting ultra vires under the color of authority, may not even defend themselves from atrocities like the ones committed here with total impunity. This should not be the case, at least in this U.S. of A..

This Court should not underestimate the fact that in the events that transpired which led to the controversy below there were egregious violations of Constitutional rights, Civil rights, Statutory rights, Regulatory rights and Ethical canons, by the Respondents, which included, among others: ultra vires actions against the express language in the applicable law, intimidation of witnesses, suborned perjury, malicious suppression of exonerating evidence, obstruction of justice, fraud upon the courts, ergo, an abuse of the legal process.

In order to adequately explain to this Court the evidently obvious injustices that precede this petition, it is necessary to inform the background of the controversy below which led to the 06-1562 appeal. Only after considering all the facts, the applicable law and regulations, the controlling jurisprudence and the sui generis circumstances you would be able to make an informed decision and

consequently provide for Justice, which is after all, your reason d'etre.

Direct and Concise Argument

Co-Petitioner Angel Ruiz Rivera, was president-founder of the non-profit corporation Instituto de Educacion Universal (IEU), President of its Board of Trustees, Chief Executive Officer, and signatory of the Program Participation Agreement with the U.S. Department of Education (USDE) for the administration of the Higher Education Act (HEA), Title IV, Student Financial Aid Programs that were object of pseudo-audits by the USDE's Office of the Inspector General (OIG) and its Institutional Review Branch. These pseudo-audits resulted in "findings" that were against the law, contrary to the evidence, fraudulently manipulated as a result of which the controversy below was filed which led to this and related litigation that has us still here begging for a day in court, not to say Justice altogether. Among the exonerating evidence maliciously suppressed you find most saliently: 1) A Quality Assurance Review Team Report (QARTR) issued by the best experts in the USDE-OIG that criticized the "findings"; and 2) the expulsion of the OIG's Auditor In Charge as result of his flaws in the audit.

Despite the fact that Ruiz Rivera is a lay person, he was allowed to appear Pro Se and in representation of IEU before the USDE-Administrative Law Judge (ALJ), without the objection of the USDE legal counsels. This

appearance was prompted by the loss of all the financial resources to pay legal honoraria. That financial incapacity was worsened when in February 1997, while the ALJ decision was not final, much less firm, the USDE unconstitutionally preconfiscated over $2.263 million dollars it owed the Petitioners, which incidentally the USDE officers had deliberately delayed in disbursing abusing of all sort of dilatory tactics. This evidently obvious taking of property without due process has remained condoned by all the courts below even to the prejudice of the own IRS which in June 1998 issued a Notice of Levy that related back to taxes owed in 1995. Due to this retroactive effect this levy was legally first in time, consequently first in right, to whatever rights the USDE may some day have, if any. Ergo, the USDE preconfiscated funds that legally pertain to the IRS instead.

Ruiz Rivera was also allowed to appear for IEU in related controversy 96-1893 (JAF) before the U.S. District Court for the District of P.R. (USDCDPR). This was a Constitutional Torts, Civil Rights action and Bivens Complaint that he promoted against USDE officers, for their unconstitutional and illegal actions provoked by their discrimination on account of ethnicity.

Ruiz Rivera was allowed to appear for IEU in the first appeal of 96-1893(JAF) before the U.S. Court of Appeals for the First Circuit (USCA1C), 97-2205, and on its second one 99-1398. He was later allowed to file before the USCA1C, Pro Se and in representation of IEU, the initial petition for judicial

review of the final USDE decision, together with an application to appear In Forma Pauperis (IFP) which was granted. See 98-1242.

When that petition to the USCA1C was transferred to the USDCDPR, Ruiz Rivera was again allowed to file for IEU. See 98-2225(RLA). When that petition was railroaded [3] for the first time, he timely filed the Notice of Appeal on behalf of both. See 99-1628. When in 2000, appeals 99-1398 (of the Constitutional, Civil Rights and Bivens action) and 99-1628 (of the petition for judicial review of the final USDE decision) were consolidated by the USCA1C, he was even allowed to appear in the oral argument.

The net result of the USCA1C decisions on those appeals were contradictory and irreconcilable. While the railroading of the Constitutional Torts, Civil Rights violations and Bivens Complaint, (99-1398), was affirmed, simultaneously, the railroading of 99-1628 was remanded. In the petition for rehearing en banc of 99-1398, which he was allowed to file for both, he timely signaled to the USCA1C that it did not make any sense legally nor in reason or logic for the USCA1C to uphold the pre-exoneration of wrongdoing by the federal officers Defendants in 96-1893 (JAF), (appeal 99-1398), if the petition for judicial review of their actions was been simultaneously remanded to the USDCDPR for

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[3] We use the term railroaded or railroading because in over fourteen years of the instant and related controversies there has not been even a single hearing, or a day in court, much less a full blown trial on the merits.

evaluation on the merits in 99-1628. The Circuit Court upheld this contradiction and incongruence which is one of the reasons why these irreconcilable rulings have continued to haunt us all to this point.

What is more pertinent and relevant to the instant petition is the fact that after years litigating Pro Se for himself and also for the corporation, during the above appeals' processes, for the first time, the U.S. Attorneys raised as an objection the issue that the Notice of Appeal filed on behalf of both, should not be allowed. The USCA1C responded rejecting this objection. See Instituto de Educacion Universal v. USDE, 209 F.3d 18 (1st Cir. 04/12/2000).

After the remand of 99-1628 in April 2000, since nothing evolved, Ruiz Rivera again filed the Complaint seeking the judicial review of the final USDE decision and it was initially acted upon by the USDCDPR. It was not until then that at the eleventh hour, the U.S. Attorneys finally objected [4] to his appearance for IEU, based on the allegation that he had supposedly withdrawn same in appeal 99-1628, at the juncture when he had complied with the USCA1C orders to retain counsel for IEU.

When 98-2225(RLA) was eventually railroaded for the second time, after almost five (5) years after the April 2000 USCA1C remand, he

[4] Up until then for may years they did not object to Ruiz Rivera's appearance for the corporation since it was very accommodating and convenient for them to continue litigating as they had being, against a non-lawyer, lay person, Pro Se, IFP litigant.

again filed the Notice of Appeal for both IEU and himself based on the law of the case, cited before, where the own USCA1C had decided that a corporation officer could file the Notice of Appeal on behalf of the corporation.

The appeal before the USCA1C that ensued, (05-1775), was unjustly ruled as having been filed late. It was admittedly filed late but only because when 98-2225(RLA) was railroaded again, the then appearing legal counsels immediately filed a motion for resignation of representation based on lack of payment of past due honoraria. The USDCDPR did not grant same motion leaving Petitioners in a sui generis "Catch 22" situation by being left with counsel de jure but not de facto. By denying this more than justified motion to resign, since they could not be obliged to work without pay, the Petitioners were inhibited from filing the Notice of Appeal due to the prohibition of hybrid representation by legal counsel and Pro Se simultaneously.

In the petition for rehearing en banc of appeal 05-1775, we raised as part of our arguments the fact that this litigant had timely filed an Injunctive Relief Petition (IRP) requesting the USDCDPR to order the USDE to release the funds that had been preconfiscated while the USDE's ALJ decision was timely appealed and consequently without the USDE having had a final much less a firm judgment upon which to justify such taking of property without due process. We claimed that this preconfiscation affected the Petitioners' Sixth Amendment rights to counsel of their choice as a result of this taking without due process. Most importantly, in same IRP,

this litigant advanced that his intention was to appeal this second railroading of 98-2225 (RLA).

While appeal 05-1775 was supposedly sub judice, the Petitioners found new exonerating evidence that they included in a timely filed FRCP Rule 60 B Motion. Same evidence constituted of:

1. That the applicable and controlling law, the Higher Education Act (HEA), specifically, and explicitly proscribed the application of the clock hour regulation to the year for which it was ultra vires upheld by the OIG in its pseudo-audit, due to the effect of the delay on its publication. [5]

2. The production of evidence of smoking gun quality that proved without a doubt that all the 512 fraudulently imputed cases of alleged "unpaid refunds" had been paid, when and how.

Based on this new evidence, the Petitioners timely filed through this legal counsel, their FRCP Rule 60 B Motion, which is available by law for anyone under these particular circumstances to file for a new trial.

The USDCDPR did not consider it at all. It limited itself to rule that: "This case is under appeal." In so doing, the USDCDPR ruled contrary to the applicable law that prescribe that FRCP 60(b) motions are to be given independent consideration

[5] See HEA, 20 U.S.C. 1070, section 482, Master Calendar.

from any other previous consideration under the court's evaluation to the point that they can be considered as a distinct cause of action and as such they can be even filed as a totally independent cause of action. See FRCP 60 (b).

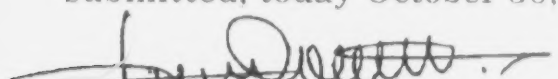
That unattended FRCP Rule 60 B Motion was what led to the 06-1562 appeal which then the USCA1C denied without more, again contrary to the beyond doubt exonerating evidence that proved that the clock hour "finding" was based on a regulation whose application was proscribed by law and the smoking gun exonerating evidence proving that the fraudulently imputed unpaid refunds were paid.

For the above stated reasons, the Honorable Justices of this Court have before you a formidable opportunity to establish policy and rule that whatever determinations of law are made regarding a controversy and its appeal(s), are not necessarily binding or have to be deemed waived in a different and distinct FRCP 60 b motion claims, most especially in terms of the standing to claim.

The third reason why the members of this Court should grant this petition for rehearing and grant the certiorari is that you have the opportunity here to make clear the legal effects of courts allowing a lay person, non-lawyer, to appear for a corporation. See Grace v. Bank of Leumi, 04-5824 (2nd.Cir. 2006), Rowland v. California Men's Colony, 113 S. Ct. 716 (1993).

## CONCLUSION

For all the above stated reasons, this Petition for Rehearing should be granted. Respectfully submitted, today October 30, 2009.



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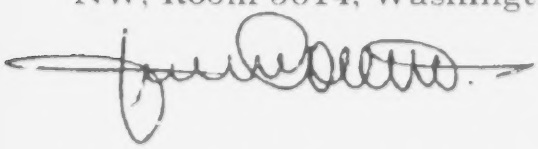
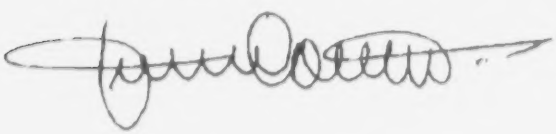
## CERTIFICATE OF SERVICE

I, Julio Morillo Limardo, Esq., hereby certify that on this same date above I have sent a copy of this Petition to the Solicitor General of the U.S., at the U.S. Department of Justice, 950 Pennsylvania Ave., NW, Room 5614, Washington, D.C. 20530-0001.



## CERTIFICATE OF COUNSEL

I, Julio Morillo Limardo, Esq., hereby certify that this Petition for Rehearing is restricted to circumstances of a substantial effect not previously presented and that it is presented in good faith and not for delay.



program. The program review cited IEU for having a history of making late refunds to students and to the Pell Grant account. The program reviewers discovered that the cause of most of the late refunds was IEU's admission that its usual practice was to wait until the September following each award year to make refund payments: its method for effecting this refund was to offset the refund against future draw downs from the Pell Grant Statement of Account. As a result. IEU's eligibility for funds would be reduced by the amount of the offset .Based on this finding of late refunds, the program reviewers asked IEU to prepare a report of refunds not made. or made late, to the Pell Grant account for each award year under review. In compliance with this request. IEU compiled an initial list of late or unpaid refunds which disclosed 803 late refunds. totaling 5971,9I4, for the 1992-93 award year: 865 late refunds, totaling S 1,044,454, for the 1993-94 award year; and, as of the time of the review. IEU had failed to make 512 refunds. totaling S655,554, for the 1994-95 award year. Ali refunds for the 1992-93 and 1993-94 award years had been paid at the time of the program review.

In response to the SFAP claim that [EU owed the Pell Grant account refunds of S655,554 for the 1994-95 award year, the school produced testimony and documents proving that on July 20, 1995, it reduced its authorization for Pell Grant funds by generating an offset of S1,120,192 to its Pell Grant account. IEU argues that this transaction represents a refund, albeit late, of more than double the amount SFAP requested. SFAP disagrees with IEU's conclusion. SFAP confirms that an offset is an appropriate method of paying a refund. but that a reduction of the authorization in a school's Pell Grant statement of account can occur for other reasons as well, such as a reduction in the number of enrolled students. SFAP insists, and I agree, that in this situation a valid refund would have been effectuated only if the reduction of IEU's authorization - was accompanied by a showing that IEU enrolled additional students who were eligible for Pell

Grants, but for which IEU did not draw down federal funds to award than those grants. IEU presented no evidence of its forbearance of the award of additional Pell Grants to match the offset of its authorizations, therefore,

I must conclude that the refund for the award year for 1994- 95 has not been consummated.

Discussion as to Termination

The Secretary has been given the statutory authority to terminate the eligibility for any program under Title IV. of an otherwise eligible institution, if it fails to carry out any regulation prescribed by the Secretary. 20 U.S.C. § 1094{0(1)(D). Pursuant to this authority, the Secretary has promulgated 34 C.F.R. § 668.86(a). which provides that the Secretary may terminate the eligibility of an institution to participate in any or all Title IV programs if the institution violates any provision of Tide IV or any regulation or agreement implementing that Title. In addition, if an institution's regulatory violations result in a breach of its fiduciarv duty to administer Tide IV programs in accordance with the highest standard of care and diligence, this conduct also constitutes grounds for termination of eligibility to participate in these programs. 34 C.F.R. § 668.82(c).

During the award years under consideration, IEU consistently engaged in conduct which was contrary to the Title IV regulations and regularly ignored policy guidance regarding its obligation to properly estimate the amount of Federal funds needed for a three day period of operation. thus allowing it to maintain excess Federal funds in its school account in violation of regulatory prohibitions designed to prevent this situation. Additionally, IEU failed to make timely refunds, and for the 1994-95 award year failed to make refunds at all, to students and/or the Pell Grant account for students who withdrew, dropped out, or were expelled from

the institution: Based upon the credible evidence of these regulatory violations.

SFAP has shown to my satisfaction that IEU lacks the administrative capability to administer Title IV programs and that it has also failed to act in a manner consistent with its fiduciary duty. I find IEU's failure of its duties in these two critical areas warrants termination of its eligibility to participate in the Title IV programs. 7

## ASSESSMENT OF FINES

In conjunction with its efforts to terminate IEU's eligibility to participate in Title IV programs. SFAP also proposes to fine IEU $275,000, arguing that the violations described above were volitional repetitive and of a most serious nature. The Secretary has the authority to impose a fine on an institution of up to 525.000 for each violation of a statutory or regulator/ provision. 34 C.F.R. § 668.84(a). In assessing this fine. the gravity of the violations should be considered. as well as the size of the school. 34 C.F.R. § 668.92(a). The seriousness of the violations will be addressed below, and I find this is not a small school.

[7] *In re Allied Schools of Puerto Rico.* Dkt No. 94-125-ST, U.S. Dep't of Education (Mar. 23. 1995), aff'd by the Secretary Sept. 18. 1995).

For IEU improperly requesting more fund than it needed for immediate disbursement. SFAP seeks a fine of $75,000. This amount is based on a fine of $25,000 for each of the three award years of the violations. 8 The gravity of IEU's retention of these excess Federal funds throughout the three year period warrants approval of $75.000, the maximum amount of this fine. In conjunction with the excess cash situation.

SFAP also seeks a fine of $75,000 for using the excess Federal funds for unauthorized purposes over the period of the three award years. SFAP did not prove this allegation, so no fine is appropriate for this finding.

SFAP is seeking a fine of $25,000 for IEU's overstatement of clock hours of instruction for award year 1993-94 and an additional S25.000 for the award of excess Pell Grant funds to its students as a result of overstating these same clock hours. Having found the overstatement of clock hours of instruction is significantly less than advocated by SFAP. no fine is appropriate for this finding.

For failure to make refunds and failure to make timely refunds, SFAP seeks a fine of $75,000, based on $25,000 for each award year´s violations. Once again, treating all late refunds occurring in each award year as one separate violation, I find that a fin of $25,000 for each year for a total fine for this finding of S75.000 is appropriate. considering the disregard shown by IEU for regulations requiring a more timely payment of refunds.

8 SFAP treats the excess cash violations occurring in an award year as one violation, rather than attempting to find a violation for each excess cash incident or occurrence.

In conclusion. I find that a total fine of S150.000 for IEU's misconduct is appropriate.

## ASSESSMENT OF PROGRAM LIABILITIES

In addition to the termination proceeding initiated under 34 C.F.R. Part 668, Subpart G. this hearing also addressed SFAP's efforts to assess liabilities against IEU pursuant to 34 C.F.R. *Part 668.* Subpart H. based on a final program review determination issued on June 1 1996, and a final audit determination issued on June 28, 1996. This assessment of liabilities relates to the same determinations as were made in the termination proceeding, that is. IEU's maintaining excess cash, failure to make Federal Pell Grant refunds and failure to make refunds in a timely manner, overstating clock hours of instruction, and, although not included in the Subpart G proceeding, IEU's failure to accurately verify information submitted by one student.

For IEU's consistent maintenance of excess cash during the three award years. SFAP has assessed a liability of S756,864. This amount represents S213,917 for the imputed interest on these excess funds which were held by IEU in its account rather than returning them to the Federal account upon the realization that it had in excess of three days need. It also includes S542.947 which represents the amount of excess cash remaining in IEU's Federal account at the conclusion of the three year Program review period. I find that IEU must reimburse SFAP for both amounts.

Although I have found that did not overstate its clock hours for the students in the day program for the 1993'94 award year, there is an overstatement of one-third of a clock hour per day for the students enrolled in its night program. IEU must recalculate the Pell Grant awards for the night students and

reimburse SFAP for any resulting over awards. Additionally IEU must recalculate the number of clock hours for bath programs for the 1994-95 award year, using the same formula as used for the 1993-94 award year, and then recalculate the Pell Grant awards accordingly. IEU must reimburse SFAP for any resulting 1994-95 over awards.

I have confirmed SFAP's finding that IEU made 1,668 late refunds for the 1992-93 and 1993-94 award year and the total dollar value of these late refunds of S2,016,368. For these late refunds. SFAP is entitled to recover the interest on those late refunds at a rate of 3 percent per year. SFAP has computed this as $15.544 for 992-93 and S18.427 for 1993-94. Additionally, I agree *with* SFAP's assertion that it is entitled to a refund from IEU of $655.554 which was due for the 1994-95 award year, along with interest of S23.561.

During the 1995 program review, it was discovered that IEU failed to conduct verification of information submitted by student number 27. IEU has not submitted satisfactory evidence to rebut this finding; therefore, it must repay SFAP the $2300 in Title IV funds paid to that student

FINDINGS

1. IEU consistently maintained program finals in recess of its needs and must reimburse the Department $756,864 for those excess funds and their costs.

2. IEU did not overstate the number of clock hours in its day program for the 1993-94 award year. It must recalculate the Pell Grant award for its 1993-94 night program, as well as both programs for the 1994-95 award year, and reimburse the Department for the over awards in Federal Pell Grant funds.

3. IEU failed to make timely refunds to the Pell

Grant program for the 1992-93, 1993-94, and 1994-95 award years and must reimburse the Department 562,532 in imputed interest costs of those late refunds. Further. IEU must reimburse the Department S655,554 for its failure to make a retired payment for the 1994-95 award year.

4. IEU must reimburse the Department S2.300 for its failure to verify the excess funds for student number 27.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Instituto de Educacion Universal to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated: that it pay a fine of $150,000: and that it reimburse the Department $1,477,230.

Richard F. O'Hair

Judge Richard F. O'Hair

Dated: January 24, 1997

(iii) Order on rehearing

First Circuit's Order of August 5, 2008 denying and striking "Motion For Conversion of the Motion Requesting Court To Clarify Its Order Into A Motion For Panel Rehearing and/or Rehearing En Banc".

United States Court of Appeals
For the First Circuit

No. 06-1562

ANGEL RUIZ-RIVERA, ET AL.,

Plaintiffs, Appellants,

v.

U.S. DEPARTMENT OF EDUCATION, ET AL.,

Defendants, Appellees.

Before

Lynch, Chief Judge,
Torruella and Selya, Circuit Judges.

ORDER OF COURT

Entered: August 5, 2008

Currently pending in the above-numbered appeal are (1) the motion of Angel Ruiz-Rivera asking that this court clarify its order of April 30, 2008 denying his motion reconsideration and (2) a request that we convert the motion for clarification into a motion for rehearing and for a stay of mandate. However, and as noted before, since appellant is not a proper party to this appeal, these motions must be stricken.

So ordered.

By the Court:

/s/ Richard Cushing Donovan, Clerk.

First Circuit's Order of October 10, 2007 denying and striking petition of Co-Plaintiff, and signatory of the Notice of Appeal, Ruiz Rivera, for rehearing and rehearing en banc and for disqualification

United States Court of Appeals For the First Circuit

No. 06-1562

ANGEL RUIZ-RIVERA, ET AL.,

Plaintiffs, Appellants,

v.

U.S. DEPARTMENT OF EDUCATION, ET AL.,
Defendants, Appellees.

ORDER OF COURT

Entered: October 10, 2007

Currently pending in the above-numbered appeal are (1) the petition of Angel Ruiz-Rivera, appearing pro se, for rehearing and rehearing en banc, and (2) Ruiz-Rivera's motion, also filed pro se, to disqualify this court from considering any matters. concerning Ruiz-Rivera or Instituto de Educacion Universal (IEU). Ruiz-Rivera, however, was dismissed as party to this appeal on November 9, 2006, and the pending petition and motion do not raise any challenges to this dismissal. Moreover, since a lay person may only represent himself, Ruiz-Rivera cannot file any;petitions or motions on behalf of IEU. We therefore have no basis upon which to rule on either matter, and we therefore order both the petition and the motion stricken.

By the Court:

(iv) Judgment sought to be reviewed

First Circuit's Judgment of May 11, 2007 Summarily affirming the district court's denial of its motion for relief of judgment, filed under Fed. R. Civ. P 60(b).

United States Court of Appeals
For the First Circuit

No. 06-1562

INSTITUTO DE EDUCACION UNIVERSAL,

Plaintiff, Appellant,

ANGEL RUIZ-RIVERA,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION, ET AL.,

Defendants, Appellees.

Before

Torruella, Circuit Judge,
Selya, Senior Circuit Judge,
and Lynch, Circuit Judge.

JUDGMENT

Entered: May 11, 2007

Appellant Instituto de Educacion Universal (IEU) appeals from the district court's denial of its motion for relief from judgment, filed under Fed. R. Civ. P. 60(b). After carefully considering the parties' briefs and the record, we can see no error in this ruling. First, and even assuming that the district court never considered the motion's merits, the motion would have had to have been denied since it merely rehashed the issues that the court already had resolved. See United States v. One Rural Lot No. 10,356,

238 F.3d 76, 78 (1st Cir. 2001) (per curiam) ("A motion for relief from judgment cannot be used merely to reargue a point already decided") (internal quotation marks and citation omitted). Second, all of IEU's appellate arguments concerning why Rule 60(b) relief was warranted are, in reality, aimed at the merits of the petition for review. It therefore is plain that IEU is attempting to use this pending appeal as "a surrogate for a seasonable appeal of the underlying judgment." See Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002). Appellant cannot do this. Id.

Summarily affirmed. See Local Rule 27.0(c).

By the Court:

Richard Custting Donovan, Clerk.

(v) Material required by 1(f),(g)

(vi) Other material the petitioner believes essential to understand the petition

Exhibits of Appendix VI

VI-1 Letters from USDE Compliance and Enforcement Director and U.S. attorney certifying IEU had not lost its eligibility.

VI-2 Collection notices by the USDE and the IRS.

VI-3 Pertinent excerpts of Ruiz Rivera's November 8, 2004 Injunctive Relief Petition where he advanced that the Plaintiffs intended to appeal if injunction was not granted.

VI-4 Higher Education Act (HEA) of 1965 as amended clause which was introduced with the FRCP 60 b Motion and that expressly proscribed the application of the regulation for the year upon which the clock hour "finding" was upheld.

VI-1. Letters from USDE Compliance and Enforcement Director and U.S. attorney certifying IEU had not lost its eligibility.

UNITED STATES DEPARTMENT OF

WASHINTON. D.C. 20202-

MAY 30
1997

Ms. Lori Marty
Great Lakes Higher Education Corporation 2401
International Lane
Madison, WI 53704-3192

Re: Instituto de Educacion Universal,

Puerto Rico - OPE: 02316400 Dear Ms.

Marty:

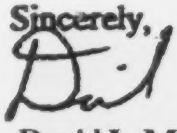
On February 19, 1997, this office faxed you a copy of the initial administrative decision in the matter of Instituto de Educacion Universal, Puerto Rico (IEU) and the U.S. Departinent of Education (Docket Nos. 96-28-ST, 96-93-SP, and 96-103-SA). The cover letter indicated that both parties planned to appeal the decision.

Please be advised that on April 4, 1997, Student Financial Assistance Programs (SFAP) appealed the decision to the Secretary of the U.S. Department of Education (Secretary). IEU appealed the decision to the. Secretary on February 28, 1997. Although the initial decision was to terminate IEU from participating in the Title IV programs, during the appeal process, the school remains eligible to

participate in these programs. 34 C.F.R. § 668.90.

If you have any further questions, please contact Amy Freireich at (202)-708-6046.

Sincerely,



David L. Morga
Director
Administrative

U.S. Department of Justice

*GUILLERMO GIL*
*United States Attorney's Office*
*District of Puerto Rico*

June 2, 1997

VIA FACSIMILE AND REGULAR MAIL

Benny Frankie Cerezo, Esq.
848 Hostos Avenue
Hyde Park
Rio Piedras, Puerto Rico 00927-4216

Re: Josefina Quinones Garcia v.
United States Civil No. 97-1722 (HL)

Dear Mr. Cerezo:

Enclosed find copy of the letters the Department of Education sent to Great Lakes Higher Education Corporation and United Student Aid Funds (USAF). These letters show that the Injunction you filed on behalf of Josefina Quinones is premature since I.E.0 has not lost its eligibility in Title IV programs.

The government will not oppose to a voluntary dismissal of the Injunction.

Please advise within the next five (5) days, if you will voluntary dismiss the complaint, if not the defendant will then file a Motion to Dismiss.

Cordially,

GUILLERMO GIL
United States Attorney

S Isabel Munoz Acosta
Assistant U.S. Attorney

VI-2. Collection notices by the USDE and the IRS.

**DEPARTMENT OF TREASURY**
**FINANCIAL MANAGEMENT SERVICE**
**BIRMINGHAM, AL 35283-0794**

December 22. 1998

Financial Officer. Instituto De Educacion Universal
Mr. Angel Rivera, President
404 Avenida Barbosa
Hato Rey, PR 00917

DMSC Account Number: 990011062-121626

Dear Financial Officer:

This is to advise you that your unpaid delinquent debt owed to the Department of Education has been referred to the U.S. Department of the Treasury for collection. According to the Department of Education's records, you owe $20,911,099.98 to the United States Government.

Aggressive legal collection action will commence against you unless you make payment in the amount of $25,540,968.50, which includes all administrative fees and applicable interest, within ten (10) days of the date of this letter.

If you wish to avoid the pending collection measures being prepared to collect your debt, you must immediately send your check or money order, made payable to the U.S. Treasury. To ensure proper credit to your account, include the account number in the memo section of your check, and forward the check with the enclosed PAYMENT COUPON to:

U.S. Department of the Treasury — FMS Debt Management Services
P.O. Box 105576



osure

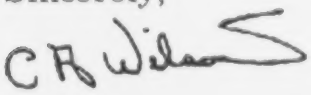
Atlanta, GA 30348

Correspondence should be directed to:

Debt Management
Servicing Center (TRFM)
Post Office Box 830794
Birmingham, AL 35283-0794

If you are unable to pay your debt in full, please contact Sharon Carter at (888) 826-3127 immediately.

Sincerely,



Charles A. Wilson
Debt Management Services

VI-3. Pertinent excerpts of Ruiz Rivera's November 8, 2004 Injunctive Relief Petition where he advanced that the Plaintiffs intended to appeal if injunction was not granted.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO I

INSTITUTO DE EDUCACION UNIVERSAL

V. 98'2225RLA

U.S. DEPARTMENT OF EDUCATION

**INJUNCTIVE RELIEF PETITION**

To the Honorable Court (HC):

Comes now the Plaintiffs', Angel Ruiz Rivera (ARR), appearing here on his own right (Pro Se); In Forma Pauperis (IFP), and in representation of IEU, 1 the defunct since 1998 legal fiction and respectfully states, alleges and prays as follows:

I. Introduction

1. Recently, on October 26, 2004, this HC issued a summary judgment order and opinion in the above referenced case after having been filed more than six (6) years ago.

2. Most recently, the appearing counsel for the Plaintiffs has moved to resign due primarily to the Plaintiffs incapacity to pay the legal firm the tens of thousands of dollars in honoraria owed, due to our IFP economic status.

Pursuant to the authority of the previous cases where ARR has temporarily represented IEU while *he retains counsel for* the defunct legal fiction. See 99-1328 and 99-1628. According to the rationale of the First Circuit in allowing my representation temporarily by way of exception, this appearance of an officer in representation of an entity is accepted in circumstances such as this where there is too *short time* to *file a motion for reconsideration* under Federal Rule of Civil Procedure 59. (10 days) and this coincides with the resignation of the preexisting legal

representation.

...

...

...

...

...

possibility of being able to retain and pay counsel to defend itself from all *these* clearly unripe unconstitutional and illegal actions since it left it totally devoid of economic resources. This is one of the reasons why IEU has been obliged to appear through its President, Pro Se, in various stages of this litigation since the onset, starting at the administrative hearings level.

7) Actually, because as we all know, the decision of this court is still not final, and we

intend to appeal it if this injunctive relief petition is not granted, we are respectfully requesting from this HC to order from the USDE the immediate release of all the pre-confiscated funds so that IEU can have economic resources to avail itself of its right to representation by counsel of its choice, a right that was preconfiscated from it by the USDE by the taking of all its property without evidently complying with basic due process. We request that from these funds, the debt owed to the previous lawyers that have represented IEU in this litigation are paid, just as the present and future ones, until this judicial review process is final and over, including any future counsel that this HC may choose to appoint for IEU due to its insolvency and the determination of this HC that its President, Angel Ruiz *Rivera* (ARR) cannot *represent* it Pro Se. This, in case my appearance for IEU is not accepted or if I die for whatever reasons. In the alternative, we pray that this HC appoints a judicial administrator of these funds who would pay the legal honoraria, fees and costs

and any other incidental cost of the rest of this litigation including appeal and any other expenditure that this HC may in time approve.

8) Very respectfully, we are also requesting that this HC orders the USDE to comply with the Notice of Levy of June 17, 1998, timely filed by the Internal Revenue Service (IRS) of the U.S. Department of the Treasury (USDT) against the USDE funds owed to IEU (Exhibit 5), since this credit of the IRS has preference in rank and in time over any credit that the USDE may

VI-4. Higher Education Act (HEA) of 1965 as amended clause which was introduced with the FRCP 60 b Motion and that expressly proscribed the application of the regulation for the year upon which the clock hour "finding" was upheld.

(B) by March 1: proposed modifications and updates pursuant to section 478 published in the Federal Register;
(C) by June L final modifications and updates pursuant to section 478 published in the Federal Register;
(D) by August 15: application for Federal student assistance and multiple data entry data elements and instructions approved;
(E) by August 30: final approved forms delivered to servicers and printers;
(F) by October 1: Federal and multiple data entry forms and instructions printed; and
(G) by November 1: Federal and multiple data entry forms, instructions, and training materials distributed.
(2) Allocations of campus-based and Pell Grant funds—
(A) by August 1: distribution of institutional application for campus-based funds (FISAP) to institutions;
(B) by October 1: final date for submission of FISAP by institutions to the Department;
(C) by November 15: edited FISAP and computer printout received by institutions;
(D) by December 1: appeals procedures received by institutions;
(E) by December 15: edits returned by institutions to the Department;
(F) by February 1: tentative award levels received by institutions and final Pell Grant schedule;
(G) by February 15: closing date for receipt of institutional appeals by the Department;
(H) by March 1: appeals process completed;
(I) by April 1: final award notifications sent to institutions; and

(J) by June 1: Pell Grant authorization levels sent to institutions.

(b) TIMING FOR REALLOCATIONS—With respect to any funds re- allocated under section 413D (e), 442(e), or 482(j), the Secretary shall reallocate such funds at any time during the course of the year that will best meet the purpose of the programs under subpart 3 of part A, part C, and part E, respectively. However, such reallocation shall occur at least once each year, not later than September 30 of that year.

(c) DELAY OF EFFECTIVE DATE OF LATE PUBLICATIONS.-**Any regulatory changes initiated by the Secretary affecting the programs pursuant to this title that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such December 1 date.** For award year 1994-95, this subsection shall not require a delay in the effectiveness of regulatory changes affecting parts B, G, and H of this title that are published in final form by May 1, 1994.

(d) NOTICE TO CONGRESS. --- The Secretary shall notify the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor I of the House of Representatives when the items specified in the calendar have been completed and provide all relevant forms, rules, and instructions with such notice.

NO. 08A883

IN THE SUPREME COURT OF THE UNITED

STATES

ANGEL RUIZ RIVERA AND
INSTITUTO DE EDUCACION UNIVERSAL
PETITIONERS

V.

UNITED STATES DEPARTMENT OF
EDUCATION
RESPONDENT

**PROOF OF SERVICE**

I Julio C. Morillo, Esq. do declare that on this date, July 6, 2009, as required by Supreme Court Rule 29 I have served a copy of the enclosed Petition For Writ of Certiorari on; Office of the Solicitor General of the U.S. Room 5614, Department of Justice, 10th Street and Constitution Avenue N.W. Washington, DC 20530 by depositing an envelope containing the above documents in the United States Mail properly addressed and with first-class postage prepaid .

Julio Morillo Limardo, Esq.
U.S.D.C. D.P.R. #130811
U.S.C.A. 1.C. #82774
Avenida Betances I-17
Hermanas Davila,
Bayamon, P.R.00959.
(787)485-5437